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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

SOLOMON VEREEN,

Petitioner,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Georgia

PETITION FOR A WRIT OF CERTIORARI

SOLOMON VEREEN, pro se
P.O. Box 44184
Atlanta, GA 30336-1184
Telephone: 404-513-3837

THE QUESTIONS PRESENTED FOR REVIEW

The Petitioner has argued that under the Federal Bankruptcy Code, when the Bankruptcy Court for the Southern District of New York rendered null and void all its previous orders, including those ratifying the foreclosure sale of the subject property, the property would have reverted to the holder at the time just prior to the bankruptcy filing, who passed title to the Petitioner. Furthermore, the Respondents' claim to title was initially obtained by mortgage fraud on the part of a third party, which puts the validity of its claim in doubt. The record in this case began in the Superior Court of DeKalb County with a Quiet Title Action filed by Petitioner. After a ruling in favor of Respondents, Petitioner applied to the Supreme Court of Georgia, who again ruled for Respondents.

1. When the courts below failed to properly apply the Federal Bankruptcy Code, did these courts unconstitutionally violate the Petitioner's right to possess and retain title to the property he purchased as a *bona fide* purchaser in good faith?

2. When the courts below failed to address the fact that Respondents' title was acquired by the mortgage fraud of a third party, did they implicitly ratify the quickly growing and severely damaging practice of mortgage fraud, which is affecting this country nationwide?

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

Counsel for Petitioner On Appeal
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For The Respondents On Appeal
Monica K. Gilroy
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CITATIONS OF OPINIONS AND JUDGMENT FROM LOWER COURT

Vereen v. Deutsche Bank National Trust Company et. al., Judgment from the Superior Court of DeKalb County, Georgia, August 28, 2006, 05CV11063-2.

Vereen v. Deutsche Bank National Trust Company et al., Judgment from the Supreme Court of the State of Georgia, June 4, 2007, S07A0519.

JURISDICTION

The statutory provision which confers on this Court jurisdiction to review on a Writ of Certiorari the judgment in question is 28 U.S.C. 1257, certiorari from final judgments of the highest court of a State.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution

The Fifth Amendment, *inter alia,* that "no person" shall be deprived of life, liberty, or property without due process of law.

Statutes (text in appendix)

Federal Bankruptcy Code 11 U.S.C. 349(b)

STATEMENT OF THE CASE

The primary issue was that the original title-holder to the property, Mr. Gerald Roebuck, had filed bankruptcy on December 31, 2002 in the United States Bankruptcy Court for the Southern District of New York. However, Osmond Consulting, foreclosed on the property on or about January 7, 2003 as it had been in the process of giving legal notice up to, including, and after, the time of the filing, with the last date of notice being January 2, 2003. Osmond Consulting did not have the mortgage on the property at the time it initiated the foreclosure proceedings; U.S. Capital Corporation held the mortgage. U.S. Capital Corporation had obtained the mortgage through the fraudulent activity of one Mr. Major Everett, against whom a one million dollar suit for damages was filed in federal court for a pattern of mortgage fraud. *Home Loan Corporation d/b/a Expanded Mortgage Credit v. Billingslea et al.*, 1:03-CV-1425-CAP (N.D.Ga. 2006) (Major Everett one of 17 named defendants).

In addition, Osmond Consulting then went to the bankruptcy court to seek validation of the foreclosure. They were able to obtain it on February 6, 2003, but did so by presenting false and misleading statements concerning Mr. Roebuck's prior use of the bankruptcy court protection for the sole purpose of defeating the creditor's ability to foreclosure. On April 7, 2003 the court annulled the stay and validated the foreclosure sale. However, after it was brought to the court's attention that the annulment was obtained on false grounds, the order annulling the stay was vacated on August 19, 2003. Osmond Consulting was aware as

early as July 2003 that the annulment would be vacated, yet continued with its chain of title.

Furthermore, the bankruptcy itself was dismissed by order of October 20, 2003, in which it was made explicit that all prior orders in the case were null and void. By this time, and admittedly during the pendency of the bankruptcy, Mr. Roebuck had transferred the property to Mr. Vereen. At no time during the transaction was Mr. Vereen informed by Mr. Roebuck that he was in fact in a bankruptcy and that the creditor had foreclosed on said property. Mr. Vereen held what he believed to be good title based on the property and tax records of DeKalb County.

Concurrently during the pendency of the bankruptcy, the chain of title to the property on the Respondents' side then passed from Osmond Consulting to Tavarus Newson, from Mr. Newson to IMPAC Funding Corp. and finally from IMPAC Funding Corp. to Deutsche Bank National Trust who then filed the Quiet Title Action. The Superior Court of DeKalb County ruled in Respondents' favor and concluded the Petitioner had no right, title or interest in the property.

For the reasons set forth herein, Petitioner shows that the special master's conclusions of law were erroneous and that the trial court erred by accepting said conclusions and granting the Respondents' Petition. Furthermore, the Supreme Court of Georgia also accepted these erroneous conclusions in upholding the trial court's ruling. Therefore, Petitioner has filed for a Writ of Certiorari.

BASES APPROPRIATE FOR ISSUING THE WRIT

A. Incorrect Application of the Federal Bankruptcy Code.

The only validation of the foreclosure sale was done by order of the bankruptcy court, which it then revoked due to the showing of fraud on the part of Osmond Consulting. The special master was erroneous in stating that the legal effect of the dismissal of the bankruptcy was to eliminate the protection provided by the automatic stay and as a result allow the foreclosure sale to stand even though it was done in violation of the automatic stay.

Four (4) months after the annulment of the stay, the underlying motion for relief from stay was vacated because it was demonstrated to the court by clear and convincing evidence that it was procured by fraud, which is the necessary standard. *Wurdick v. Clements,* 451 F.2d 988 (9th Cir. 1971). Reinstatement of the automatic stay is based on the fact that the underlying circumstances materially changed after the bankruptcy court issued its order. *Miles v. Beneficial* (1st Cir. Ct. of App. 05-1892). It was proved to the court's satisfaction that the grounds upon which Osmond Consulting obtained the relief from stay was fraudulent, misrepresenting Mr. Roebuck's history of filings with the bankruptcy court and making unfounded accusations of abuse of the system. The court concluded, as a result, that the foreclosure sale was in fact done in violation of the automatic stay.

Furthermore, the record reflects that in July of 2003 Mr. Roebuck attempted to have the Deed Under Power set aside by the bankruptcy court at the same time he requested the Order Lifting the Automatic Stay be vacated (R 527-530, also attached as Exhibit "B"). Also, Mr. Vereen requested the same relief in his first Quiet Title action filed on May 2, 2003 (DeKalb County Sup. Ct. case no. 03-CV-4973).

Because the order dismissing the stay in bankruptcy rendered all previous orders null and void pursuant to 11 U.S.C. 349(b)(2), this includes the orders necessary to validate the foreclosure sale. The special master cites 11 U.S.C. 349(b)(3) for the authority to state that the foreclosure sale was then revalidated as a result of the dismissal of the bankruptcy. However, he was incorrect as to its legal effect. 11 U.S.C. 349(b)(3) reads as follows:

> dismissal "revests the property of the estate in the entity in which such property was vested *immediately* before the commencement of the case under this title." (emphasis added)

Because the proper foreclosure proceedings had not been completed at the time Mr. Roebuck filed on December 31, 2002, upon the dismissal of the bankruptcy the property revested with Mr. Roebuck subject to the first mortgage lien, as the situation stood on December 30, 2002.

B. Crucial Matter of First Impression.

Mortgage fraud is increasing exponentially since 2000. Between 2001 and 2004, there was a fivefold increase in mortgage fraud investigations by the FBI. Between 2004 and 2007, it doubled. Furthermore, Georgia is presently the state with the highest incidence of mortgage fraud, although 26 other states have significant mortgage fraud occurring.

The potential impact of this widespread mortgage fraud on financial institutions and the stock market is clear. If fraudulent practices become systemic within the mortgage industry and mortgage fraud is allowed to be unrestrained, it will ultimately place financial institutions at risk and have adverse effects on the stock market. Investors may lose faith and require higher returns from mortgage-backed securities, which will result in higher interest rates and fees paid by borrowers, limiting the amount of investment funds available for mortgage loans. Mortgage fraud costs the industry and consumers millions of dollars each year.

Therefore, this case not only requires a correction of incorrect application of federal law, but gives the court the opportunity to be explicitly clear that no benefit can come from dealing with those who perpetrate mortgage fraud. The financial institution which foreclosed on the property at issue had obtained title by and through the fraudulent activity of Mr. Major Everett, and as part of said fraud, they did not even

have proper title to and interest in the property at the time the foreclosure process commenced.

Osmond Consulting (1) foreclosed on the property after Mr. Roebuck filed bankruptcy and did not request emergency relief from the court first; (2) misrepresented Mr. Roebuck's prior history of filings in order to persuade the court to lift the stay in bankruptcy and validate the foreclosure sale; and (3) continued with its chain of title after the court vacated its order and held that the foreclosure violated the automatic stay.

Mr. Vereen, by contrast, was a *bona fide* good faith purchaser of the property who did not know the property was part of the bankruptcy estate. Therefore, the equitable, as well as legally sound, decision is that the title to the property vested in Mr. Vereen upon the dismissal of the bankruptcy and his chain of title is the valid one.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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In the Supreme Court of Georgia

Decided: Jun. 4, 2007

S07A0519. VEREEN v. DEUTSCHE BANK NATIONAL TRUST COMPANY.

HUNSTEIN, Presiding Justice.

Appellant Solomon Vereen appeals from the trial court's order adopting the special master's ruling on summary judgment in favor of appellee Deutsche Bank National Trust Company in the quiet title actions each party initiated regarding the same parcel of residential property on Vista Point Trail in Stone Mountain, Georgia. For the reasons that follow, we affirm.

The uncontroverted evidence established that the property was originally owned by Roebuck and served to secure a loan upon which Roebuck defaulted. Osmond Consulting, LLC, the assignee of the holder of the security deed, instituted foreclosure proceedings. Roebuck filed for bankruptcy relief eight days before the scheduled foreclosure sale, thereby invoking the automatic stay provision in 11 USC § 362(a). Osmond filed an emergency motion for relief from the automatic stay on January 7, 2003, which was the same day Osmond purchased the property at the foreclosure sale. Osmond's motion was not heard until February 6, at which time it was granted. Osmond also filed an amendment to its emergency motion to have its January foreclosure sale validated by an amendment of the stay. On April 7, the bankruptcy court annulled the stay based on its finding that Roebuck filed the case in bad faith to avoid the foreclosure.

See 11 USC § 362(d). Two days after this order was filed, the deed under power from the January foreclosure sale was recorded in DeKalb County. Nothing in the record reflects that Roebuck or appellant Vereen, who purchased the property from Roebuck approximately two weeks after the deed under power was recorded, has taken any steps to set aside the foreclosure sale and deed under a power of sale.

In August 2003, four months after the deed under power conveyed the property to Osmond, the bankruptcy court vacated its order granting Osmond's emergency motion for relief from the automatic stay.[1] However, a few weeks later the bankruptcy court dismissed the petition filed by Roebuck in an order that expressly reflected that the earlier orders entered by the bankruptcy court were "null and void." Subsequently, the party to whom Osmond had conveyed its interest in the property, Newson, defaulted on the loan secured by the property and the assignee of the holder of the loan, appellee Deutsche Bank, foreclosed on the property and purchased it at the foreclosure sale.

Based on this uncontroverted evidence, we find that the trial court properly adopted the special master's findings that fee simple title to the property is vested in Deutsche Bank and that the transfer of

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[1] Although the August order expressly referenced only the bankruptcy court's February order, its language implicitly included the April order annulling the stay.

the property by Roebuck to Vereen, executed after the bankruptcy court annulled the automatic stay and the deed under power into Osmond was filed, failed to convey any legal title in the property to Vereen. It is clear that the foreclosure sale was initially void ab initio because it was conducted after the automatic stay went into effect. See *In re Albany Partners, Ltd.*, 749 F.2d 670, 675 (11th Cir. 1984) ("acts taken in violation of the automatic stay are generally deemed void and without effect"). However, the bankruptcy court's annulment of the stay served to validate retrospectively the sale. See id.; see also *McKeen v. Federal Deposit Ins. Corp.*, 274 Ga. 46, 48 (549 SE2d 104) (2001) ("*Albany* stated that the general rule in the Eleventh Circuit is that [actions in violation of the automatic stay in bankruptcy cases] are void ab initio, but the stay may be annulled at the discretion of the [bankruptcy] court, particularly where there are issues of bad faith"). As a result of the foreclosure, the property legally vested in the purchaser at the foreclosure sale, Osmond, and divested Roebuck of all rights in the property, as well as the rights of all those claiming through Roebuck, namely, appellant Vereen. See *Boyer v. Whiddon,* 264 Ga. App. 137, 138, (589 SE2d 709) (2003).

We do not agree with appellant Vereen that a different result is required by the bankruptcy court's August order, which vacated the relief it had earlier granted Osmond Consulting and found that the January 7 transfer violated the automatic stay. The transfer, initially made void by 11 USC § 362(a), was

expressly made valid by the bankruptcy court's order annulling the stay, id. at (d), so that the conveyance of the property out of the debtor's estate was legal. See *Albany,* supra. Neither Roebuck nor appellant ever obtained any order by the bankruptcy court setting aside the deed under power, which is the only court with the authority to enforce the August order. Accord *Stivali v. Aquiport Aylesbury, Inc.,* 244 Ga. App. 389, (535 SE2d 551) (2000). Nor may this Court weigh the relative merits of the bankruptcy court's various orders. We simply recognize that the transfer of the property into Osmond was valid when the deed under power was recorded and in the absence of any court order invalidating or setting aside that deed, it legally vested title in the property in Osmond and thus in Deutsche Bank, Osmond's successor in title. Insofar as appellant challenges Osmond's title because of various alleged procedural flaws in the foreclosure process, appellant chose to institute a quiet title action and thus appellant's right to recovery or relief depends upon the strength of his own title, not any weakness in appellee's. See generally *Smith v. Ga. Kaolin Co.,* 269 Ga. 475, 477(2) (498 SE2d 266) (1998).

Accordingly, we affirm the trial court's order that fee simple title to the property is vested in Deutsche Bank and that appellant has no right, title, interest or lien in or against the property.

Judgment affirmed. All the Justices concur.

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Indenture Trustee Under the Indenture Relating to IMH Assets Corp. Collateralized Asset-Backed Bonds 2003-10, its Assignees and Successors in Interest,	)	CIVIL ACTION FILE NO. 05CV-11063-4
Petitioner,	)	
vs.	)	
A PARCEL OF LAND, TAX ID NO. 18-027-01-132, DEKALB COUNTY, GEORGIA, SOLOMON VEREEN, CAPITOL CITY BANK & TRUST COMPANY, OSMOND CONSULTING, LLC, and/or ANY AND ALL PARTIES KNOWN OR UNKNOWN CLAIMING ANY INTEREST IN SAID PARCEL OF LAND,	)	
Respondents.	)	

FINAL JUDGMENT AND ORDER

(Filed Aug. 20, 2006)

Upon this court's consideration and review of the Special Master's Report, based upon such Special Master's Hearing on Petitioner's Motion for Summary

Judgment, this Court enters the following Final Order and Decree.

1.

This Final Judgment and Order is entered pursuant to all provisions of O.C.G.A. §§ 23-3-40-44, and 23-3-63-68, *et seq.*, and this decree conclusively establishes the title of the real property which is the subject of this particular action, as set forth in this Order, as against all the world, subject only to the interests owned or held by the named Petitioner herein, or subject to the other interests, as set forth in the Special Master's Report and/or Findings of Fact.

2.

Upon due consideration and review of the Special Master's Report, including Findings of Fact and Conclusions of Law, the referenced Special Master's Report is approved and expressly adopted by this Court, and the same is hereby incorporated in this Final Order by reference thereto.

3.

The Court, therefore, holds and finds that the Fee Simple title to the Subject Property commonly known as **7372 VISTA POINT TRAIL, STONE MOUNTAIN, GEORGIA 30087** and being more fully and particularly described on **EXHIBIT "A"** attached

hereto and incorporated by reference herein, is vested in Petitioner, **DEUTSCHE BANK NATIONAL TRUST COMPANY, as Indenture Trustee Under the Indenture Relating to IMH Assets Corp. Collateralized Asset-Backed Bonds 2003-10, its Assignees and Successors in Interest,** on the grounds that the February 6, 2003 Bankruptcy Court Order lifting the automatic stay and the April 7, 2003 Bankruptcy Order annulling the automatic stay in the case of Gerard Roebuck, Case No. 02-43805 in the Bankruptcy Court for the Southern District of New York ("Roebuck Bankruptcy"), which is the corresponding bankruptcy case in this action, created a dissolution of the bankruptcy stay retroactively to the date of filing of Roebuck's Bankruptcy Petition, thereby validating the foreclosure sale. *See In re Albany Partners, Ltd.,* 749 F. 2d 670 (11th Cir. 1984); 11 U.S.C. §349(b)(3).

4.

The Court further holds that, even if the April 7, 2003 Roebuck Bankruptcy Order was ineffective to retroactively annul the 11 U.S.C. §362 Bankruptcy Stay as to Osmond, the October 27, 2003 Dismissal Order voided ***all*** previous Orders in the Roebuck Bankruptcy case, thereby validating all components of the January 7, 2003 foreclosure sale. *Id.* See also 11 U.S.C. Section 349(b)(3).

5.

The Special Master further finds that Capitol City Bank & Trust Company never filed an Answer or any other responsive pleadings in accordance with O.C.G.A. §9-11-12, and therefore all material allegations of the Petition are deemed to be true, correct and factual as to Capitol City Bank & Trust Company.

6.

The Court further finds that the April 23, 2003 conveyance from Roebuck to Vereen without approval from the Bankruptcy Court, was null and void in light of the April 7, 2003 Roebuck Bankruptcy Order and the October 27, 2003 Dismissal Order, both of which nullified any bankruptcy stay as to the January 7, 2003 foreclosure sale to Osmond Consulting, LLC, and validated the January 7, 2003 foreclosure sale. *See In re Albany Partners, Ltd.,* 749 F. 2d 670 (11th Cir. 1984); 11 U.S.C. §349(b)(3).

7.

Accordingly, this Court holds further there is no right, title, or interest or lien in or against the Subject Property, found to be or vested in any of the named Respondents herein, nor any interest in any entity or party, whether known or unknown, except for: (a) any unpaid real estate ad valorem taxes, if any; (b) any easements, restrictions, covenants and right-of-way agreements of record; and (c) all facts

and conditions which would be revealed by an accurate survey and inspection of the Property.

8.

The Special Master holds that the Clerk of the Superior Court of DeKalb County is expressly ordered to record the original of the referenced Final Judgment and Order in this civil action matter, upon payment of the costs for the recording of such document, in the Public Deed Records in the Office of the Clerk of such Superior Court. A marginal reference to the recorded Final Order shall be entered by the Clerk's office upon the following documents of record:

a. October 18, 1994 Security Deed to United Companies Lending Corporation, recorded at Deed Book 8433, Page 073, DeKalb County, Georgia Records.

b. April 2, 1996 Assignment from United Lending Companies Lending Corporation to Bankers Trust Company of California, N.A., recorded at Deed Book 8962, Page 380, aforesaid records.

c. July 12, 1999 Assignment from Bankers Trust Company of California, N.A. to UCLC, recorded at Deed Book 10816, Page 499, aforesaid records.

d. July 15, 1999 Assignment from UCLC to Osmond Consulting, LLC, recorded at Deed Book 10816, Page 500, aforesaid records.

e. December 27, 2001 Assignment from Osmond Consulting, LLC to Major Everett, recorded at Deed Book 12799, Page 262, aforesaid records.

g. May 16, 2002 Quitclaim Deed from Capital Mortgage Corporation and First Financial Funding, Inc. to Major Everett, recorded at Deed Book 13369, Page 309, aforesaid records.

h. December 21, 2002 Assignment from Major Everett to Osmond, recorded at Deed Book 14330, Page 511, aforesaid records.

i. January 6, 2003 Quitclaim Deed from UC Capital Corporation to Major Everett, recorded in Deed Book 14330, Page 510, aforesaid records.

j. January 7, 2003 Deed Under Power of Sale recorded at Deed Book 14330, Page 512, aforesaid records.

k. April 21, 2003 Quitclaim Deed from Osmond Consulting, LLC to EHHK Construction, LLC, recorded at Deed Book 14372, Page 554, aforesaid records.

l. April 23, 2003 Warranty Deed from Roebuck to Vereen, recorded at Deed Book 14526, Page 391, aforementioned records.

m. April 23, 2003 Security Deed to Capitol, recorded at Deed Book 14526, Page 393, aforesaid records.

n. August 21, 2003 Warranty Deed from Osmond to Newson, recorded at Deed Book 15084, Page 611, aforesaid records.

o. August 21, 2003 Security Deed from Newson to IMPAC, recorded at Deed Book 15084, Page 613, a aforesaid records.

p. August 21, 2003 Assignment from IMPAC to Deutsche Bank National Trust Company, recorded at Deed Book 16503, Page 226, aforesaid records.

q. August 3, 2004, Deed Under Power, recorded at Deed Book 16503, Page 228, aforesaid records.

9.

The Court awards and directs the payment of the Special Master's fees to be assessed and paid by the Petitioner.

SO ORDERED, This 28 day of August, 2006.

/s/ Gail C. Flake
GAIL C. FLAKE, Judge
Superior Court of
DeKalb County, Georgia

ORDER SUBMITTED BY:

John E. Robinson
State Bar No. 610425
As Special Master
McLarty, Robinson, & Van Voorhies, LLP
One Decatur Tow . Center, Suite 330
150 East Ponce de Leon Avenue
Decatur, Georgia 30030
(404) 377-6464

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 27 of the 18th District of DeKalb County, Georgia, being Lot 208, Block I, Harbor Pointe at Waters Edge Subdivision, Unit II, as per Plat recorded in Plat Book 95, Page 79, DeKalb County, Georgia Records, which Plat is incorporated by reference herein.

Said property also being known as 7372 Vista Point Trail, Stone Mountain, Georgia 30087 and having a TPID No. 18-027-01-132.

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Indenture Trustee Under the Indenture Relating to IMH Assets Corp. Collateralized Asset-Backed Bonds 2003-10, its Assignees and Successors in Interest,	)	
Petitioner,	)	CIVIL ACTION
vs.	)	FILE NO.
A PARCEL OF LAND, TAX ID NO. 18-027-01-132, DEKALB COUNTY, GEORGIA, SOLOMON VEREEN, CAPITOL CITY BANK & TRUST COMPANY, OSMOND CONSULTING, LLC, and/or ANY AND ALL PARTIES KNOWN OR UNKNOWN CLAIMING ANY INTEREST IN SAID PARCEL OF LAND,	)	05-CV-11063-2
	)	(Filed
	)	Aug. 21, 2006)
Respondents.	)	

SPECIAL MASTER'S REPORT, INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-styled and referenced matter came before the Special Master for a duly and regularly scheduled hearing on the Petitioner's Motion for Summary Judgment on Friday, July 28, 2006, at 9:30 a.m. to ascertain and determine the validity, nature or extent of Petitioner's title and all other interests in

the real property which is the primary respondent and subject of this quiet title action; and for a report to the Court, as to the Special Master's Findings of Fact. Such Special Master's Hearing was held, as scheduled, at such date and time, after reasonable notice of such Hearing was given to all parties entitled to such notice for whom the Special Master had, or could, after due diligence, obtain a service address.

At such Hearing, the only parties that appeared were Deutsche Bank National Trust Company, through its counsel, Monica K. Gilroy, Esquire; Solomon Vereen and his counsel, Joe W. Cook, Esquire; and Gerard Roebuck, Pro Se. Counsel for Capitol City Bank & Trust Company and Osmond Consulting, LLC, did not appear at the noticed hearing. At the hearing, the Special Master heard from counsel and received statements by Gerard Roebuck, Monica K. Gilroy, in her capacity as Petitioner's counsel, and by Joe W. Cook, in his capacity as Respondent Solomon Vereen's counsel. The Special Master requested that the parties, in addition to establishing the position of their clients as to the Property, also address the following issues:

1. The applicable bankruptcy law which supports their contentions concerning:

a. The effect of an Order granting a stay in bankruptcy;

b. The effect of an Order "annulling" a stay in bankruptcy;

c. The effect of an Order vacating a prior Order which provides relief from a stay in bankruptcy; and

d. The effect of an Order annulling and voiding all prior Orders, including orders granting, annulling, and vacating a stay in a bankruptcy.

2. The effect, if any, of the doctrine of after-acquired title, in this action.

FINDINGS OF FACT

THE SPECIAL MASTER FINDS AS A MATTER OF FACT AS FOLLOWS:

1.

The parcel of land for which this Petition to Quiet Title has been brought is identified as **7372 VISTA POINT TRAIL, STONE MOUNTAIN, Georgia 30087 DEKALB COUNTY, GEORGIA a/k/a T.P I.D. # 18-027-01-132** ("Property"), being more fully and particularly described on **EXHIBIT "A"** attached hereto and incorporated by reference herein. The Special Master finds that this Court has jurisdiction over this Quiet Title action and that this Court is the correct venue for this action.

2.

On October 18, 1994, Gerard Roebuck (hereinafter "Roebuck"), by virtue of his interest in the subject Property, obtained a loan from United Companies

Lending Corporation ("UCLC"). In connection with the loan, Roebuck executed a Note and granted a Security Deed to UCLC recorded on January 9, 1995 at Deed Book 8433, Page 073, DeKalb County, Georgia Records (hereafter "UCLC Security Deed").

3.

On April 2, 1996 and effective March 1, 1995 UCLC assigned its interest in the UCLC Security Deed to Bankers Trust Company of California, N.A. ("BTCC"), said Assignment being recorded in Deed Book 8962, Page 380, aforesaid records.

4.

On July 12, 1999, BTCC assigned its interest in the UCLC Security Deed to UCLC by Transfer and Assignment recorded at Deed Book 10816, Page 499, aforesaid records.

5.

On July 15, 1999 UCLC assigned its interest in the UCLC Security Deed to Osmond Consulting, LLC ("Osmond"), said Assignment being recorded in Deed Book 10816, Page 500, aforesaid records.

6.

On December 27, 2001, Osmond assigned its interest in the UCLC Security Deed to Major Everett

by Transfer and Assignment recorded at Deed Book 12799, Page 262, aforesaid records.

7.

On December 27, 2001 Major Everett assigned his interest in the UCLC Security Deed to US Capital Corporation, Capital Mortgage Corporation and First Financial Funding, Inc. by Transfer and Assignment recorded at Deed Book 12799, Page 265, aforesaid records.

8.

On May 16, 2002 Capital Mortgage Corporation and First Financial Funding, Inc. quitclaimed their interest in the UCLC Security Deed to Major Everett by Quitclaim Deed recorded at Deed Book 13369, Page 309, aforesaid records.

9.

On January 6, 2003, US Capital Corporation quitclaimed its interest in the UCLC Security Deed to Major Everett by Quitclaim Deed recorded in Deed Book 14330, Page 510, aforesaid records.

10.

On December 21, 2002, Major Everett assigned his interest in the UCLC Security Deed to Osmond by

Assignment and Transfer, recorded at Deed Book 14330, Page 511, aforesaid records.

11.

On or about December 31, 2002, Roebuck filed a Chapter 13 Bankruptcy Petition in the U.S. Bankruptcy Court, Southern District of New York, Bankruptcy Petition No. 02-43805 (hereinafter "Roebuck Bankruptcy Case").

12.

On or about January 7, 2003, Respondent Osmond filed an Emergency Motion for Relief from Automatic Stay to Conduct Foreclosure Sale (hereinafter "Emergency Motion") in the Roebuck Bankruptcy Case.

13.

On or about January 7, 2003, pursuant to Roebuck's failure to make payments due under the Note and Security Deed, the subject Property was sold at a foreclosure sale by Respondent Osmond to the highest bidder, which was Respondent Osmond (hereinafter "the foreclosure sale"). The Deed Under Power evidencing the foreclosure sale was recorded at Deed Book 14330, Page 512, aforesaid records. Because of the pending Emergency Motion, the Deed Under Power was not recorded until April 9, 2003, several months after the foreclosure sale.

14.

On February 6, 2003, a hearing was held in the Roebuck Bankruptcy Case with regard to the pending Emergency Motion and on or about February 6, 2003, the Bankruptcy Court granted Respondent Osmond's Emergency Motion.

15.

On or about February 26, 2003, Respondent Osmond filed an Amendment to the Emergency Motion seeking to have the foreclosure sale validated by an annulment of the stay.

16.

On April 7, 2003, the Bankruptcy Court entered an Order Annulling the Stay, as the Bankruptcy Court found that the Roebuck Bankruptcy Case was filed in bad faith (when coupled with three previous bankruptcy filings by Roebuck) in an attempt to thwart the foreclosure sale.

17.

Pursuant to the Order annulling the automatic stay, on or about April 9, 2003, the Deed Under Power as to the January 7, 2003 foreclosure sale was recorded at Deed Book 14330, Page 512, aforesaid records.

18.

On April 21, 2003, Respondent Osmond conveyed its interest in and to the Property to EHHK Construction, LLC (hereafter "EHHK") by Quitclaim Deed recorded at Deed Book 14372, Page 554, aforesaid records.

19.

Despite Roebuck's interest in the subject Property being extinguished by the foreclosure sale (wherein Respondent Osmond acquired the property and thereupon conveyed the same to EHHK), on April 23, 2003, Roebuck, without approval from the Bankruptcy Court, conveyed his interest in the subject Property to Respondent Solomon Vereen (hereafter "Vereen") by Warranty Deed recorded at Deed Book 14526, Page 391, aforesaid records.

20.

On April 23, 2003, Respondent Vereen, by virtue of his alleged interest in the subject Property, obtained a loan from Respondent Capitol City Bank & Trust Company (hereafter "Capitol City"). In connection with the loan, Respondent Vereen executed a Note and granted a Deed to Secure Debt and Security Agreement to Respondent Capitol City, which is recorded at Deed Book 14526, Page 393, aforesaid records.

21.

On or about August 19, 2003, the Bankruptcy Court entered an Order Vacating Its Prior Order of This Court From Automatic Stay dated February 6, 2003 in granting Osmond Consulting, LLC Relief.

22.

On August 21, 2003, Respondent Osmond conveyed its interest in the Property to Tavarus Newson (hereinafter "Newson") by Warranty Deed recorded at Deed Book 15084, Page 611, aforesaid records.

23.

On or about August 21, 2003, Newson, by virtue of his interest in the subject Property, obtained a loan from IMPAC Funding Corp. d/b/a IMPAC Lending Group (hereinafter "IMPAC"). In connection with the loan, Newson executed a Note and granted a Security Deed to IMPAC recorded on September 25, 2003 at Deed Book 15084, Page 613, aforesaid records.

24.

On or about August 21, 2003, IMPAC assigned its interest in the Security Deed to Deutsche Bank National Trust Company (hereafter "Deutsche Bank"), Petitioner, by Assignment recorded on August 19, 2004 at Deed Book 16503, Page 226, aforesaid records.

25.

The Judge in the Roebuck Bankruptcy Case issued an Order Dismissing Case with prejudice on or about October 20, 2003.

26.

On or about August 3, 2004, pursuant to Newson's failure to make payments due under the Note and Security Deed, the Subject Property was sold at foreclosure sale by Petitioner to the highest bidder, which was Petitioner (hereinafter "the second foreclosure sale"). The Deed Under Power evidencing the second foreclosure sale was recorded at Deed Book 16503, Page 228, aforesaid records.

27.

On or about August 19, 2004, Petitioner, through counsel, initiated dispossessory proceedings against Newson.

28.

On or about September 28, 2004, Petitioner, through counsel, applied for a Writ of Possession. An eviction was conducted and the Subject Property was secured by the Petitioner.

29.

On or about October 4, 2004, Respondent Vereen, pursuant to his alleged interest in the Subject Property arising out of the conveyance from Roebuck following the first foreclosure sale, initiated dispossessory proceedings against Newson.

30.

On or about October 11, 2004, Respondent Vereen applied for a Writ of Possession. An eviction was conducted and the Subject Property was secured by Respondent Vereen. The DeKalb County Marshal posted a "No Trespassing" notice on the Subject Property.

31.

The Special Master finds that Service of Process upon the named Respondents: **OCCUPANT/ TENANT/RESIDENT; DEKALB COUNTY, GEORGIA, SOLOMON VEREEN, CAPITOL CITY BANK & TRUST COMPANY, and OSMOND CONSULTING, LLC,** was perfected by personal service.

32.

The Special Master finds that service of process upon any "unknown" parties who have or claim any title in the property, was not possible by personal service, and therefore service of process upon these and all other Respondents, whether named or

unnamed, was perfected by publication of notice, as required by law.

33.

The Special Master finds that, with the exceptions of **GERARD ROEBUCK and SOLOMON VEREEN,** no Respondent filed an Answer or any other responsive pleadings, controverting or denying the allegations of the Petition.

34.

The Special Master finds that Respondent Solomon Vereen was brought into this action by Order dated February 27, 2006 and since that time has filed responsive pleadings to the Plaintiff's Motions and Briefs.

35.

The Special Master finds that Capitol City Bank & Trust Company submitted a letter dated April 26, 2006 and claims an interest in the Property due to the fact that it has a Security Deed recorded in DeKalb County, Georgia at Deed Book 14526, Page 393, aforesaid records, on April 28, 2003 for a loan extended to Respondent Solomon Vereen. However, Capitol City never filed an Answer or any other responsive pleadings in accordance with O.C.G.A. §9-11-12.

BASED UPON SUCH FINDINGS OF FACTS, The Special Master enters the following Special Master's Conclusions of Law. The Special Master has

also submitted herewith a Proposed Final Order, which the Special Master recommends to the Court; and the Special Master moves that the Court adopt the Proposed Order as the Order of Court, as stated.

SPECIAL MASTER'S CONCLUSIONS OF LAW

1.

The Special Master holds that the February 6, 2003 Roebuck Bankruptcy Court Order lifting the automatic stay and the April 7, 2003 Roebuck Bankruptcy Order annulling the automatic stay, created a dissolution of the bankruptcy stay retroactively to the date of filing of Roebuck's Bankruptcy Petition, thereby validating the January 7, 2003 foreclosure sale. *See In re Albany Partners, Ltd.*, 749 F. 2d 670 (11th Cir. 1984); 11 U.S.C. §349 (b)(3).

2.

The Special Master further holds that, even if the April 7, 2003 Roebuck Bankruptcy Order was ineffective to retroactively annul the 11 U.S.C. §362 Bankruptcy Stay as to Osmond, the October 27, 2003 Dismissal Order voided ***all*** previous Orders in the Roebuck Bankruptcy case, thereby validating all components of the January 7, 2003 foreclosure sale. *Id.*

3.

The Special Master finds and holds that Fee Simple title in to the Subject Property as described as

7372 VISTA POINT TRAIL, STONE MOUNTAIN, GEORGIA 30087 and being more fully and particularly described on **EXHIBIT "A"** attached hereto and incorporated by reference herein is vested in Petitioner herein, **DEUTSCHE BANK NATIONAL TRUST COMPANY**, by virtue of the two (2) foreclosure sales and subsequent Deeds Under Power, as referenced in the Findings of Fact above.

4.

The title into the Petitioner, is subject only, as may be applicable, to the following exceptions: (a) Any unpaid assessments and real estate ad valorem taxes, if any; (b) All easements, restrictions, covenants and right-of-way deeds of record; and (c) All facts and conditions which would be revealed by an accurate survey and inspection of the Property.

5.

The Special Master further finds that Capitol City never filed an Answer or any other responsive pleadings in accordance with O.C.G.A. §9-11-12, and therefore all material allegations of the Petition are deemed to be true, correct and factual as to Capitol City.

6.

The Special Master further holds that the April 23, 2003 conveyance from Roebuck to Vereen, without approval from the Bankruptcy Court, and subsequent

to the foreclosure sale (which divested Roebuck of all interest in the Property) was null and void in light of the April 7, 2003 Roebuck Bankruptcy Order and the October 27, 2003 Dismissal Order, both of which nullified any bankruptcy stay and validated the January 7, 2003 foreclosure sale. *See In re Albany Partners. Ltd.*, 749 F. 2d 670 (11th Cir. 1984); 11 U.S.C. §349 (b)(3).

7.

The Special Master holds that there is no right, title, interest, or lien in or against the Property, found to be or vested in any of the individually named Respondents herein, nor any interest in any entity or party, whether known or unknown, except for: (a) any unpaid real estate ad valorem taxes, if any; (b) any easements, restrictions, covenants and right-of-way deeds of record; and (c) all facts and conditions which would be revealed by an accurate survey and inspection of the Property.

8.

The Special Master holds that the Clerk of the Superior Court of DeKalb County is expressly ordered to record the original of the referenced Final Judgment and Order in this civil action matter, upon payment of the costs for the recording of such document, in the Public Deed Records in the Office of the Clerk of such Superior Court. A marginal reference to

the recorded Final Order shall be entered by the Clerk's office upon the following documents of record:

a. October 18, 1994 Security Deed to United Companies Lending Corporation, recorded at Deed Book 8433, Page 073, DeKalb County, Georgia Records.

b. April 2, 1996 Assignment from United Lending Companies Lending Corporation to Bankers Trust Company of California, N.A., recorded at Deed Book 8962, Page 380, aforesaid records.

c. July 12, 1999 Assignment from Bankers Trust Company of California, N.A. to UCLC, recorded at Deed Book 10816, Page 499, aforesaid records.

d. July 15, 1999 Assignment from UCLC to Osmond Consulting, LLC, recorded at Deed Book 10816, Page 500, aforesaid records.

e. December 27, 2001 Assignment from Osmond Consulting, LLC to Major Everett, recorded at Deed Book 12799, Page 262, aforesaid records.

f. December 27, 2001 Transfer and Assignment from Major Everett to US Capital Corporation, Capital Mortgage Corporation and First Financial Funding, Inc., recorded at Deed Book 12799, Page 265, aforesaid records.

g. May 16, 2002 Quitclaim Deed from Capital Mortgage Corporation and First

Financial Funding, Inc. to Major Everett, recorded at Deed Book 13369, Page 309, aforesaid records.

h. December 21, 2002 Assignment from Major Everett to Osmond, recorded at Deed Book 14330, Page 511, aforesaid records.

i. January 6, 2003 Quitclaim Deed from UC Capital Corporation to Major Everett, recorded in Deed Book 14330, Page 510, aforesaid records.

j. January 7, 2003 Deed Under Power of Sale recorded at Deed Book 14330, Page 512, aforesaid records.

k. April 21, 2003 Quitclaim Deed from Osmond Consulting, LLC to EHHK Construction, LLC, recorded at Deed Book 14372, Page 554, aforesaid records.

l. April 23, 2003 Warranty Deed from Roebuck to Vereen, recorded at Deed Book 14526, Page 391, aforementioned records.

m. April 23, 2003 Security Deed to Capitol, recorded at Deed Book 14526, Page 393, aforesaid records.

n. August 21, 2003 Warranty Deed from Osmond to Newson, recorded at Deed Book 15084, Page 611, aforesaid records.

o. August 21, 2003 Security Deed from Newson to IMPAC, recorded at Deed Book 15084, Page 613, aforesaid records.

p. August 21, 2003 Assignment from IMPAC to Deutsche Bank National Trust Company, recorded at Deed Book 16503, Page 226, aforesaid records.

q. August 3, 2004, Deed Under Power, recorded at Deed Book 16503, Page 228, aforesaid records.

10.

The Special Master asks and holds that the Court award all costs and the Special Master's fees, to be assessed against the Petitioner.

This 18th day of August, 2006.

Respectfully submitted,

/s/ John E. Robinson
JOHN E. ROBINSON
As Special Master for Gail C. Flake,
Judge Superior Court of DeKalb County

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EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 27 of the 18th District of DeKalb County, Georgia, being Lot 208, Block I, Harbor Pointe at Waters Edge Subdivision, Unit II,

as per Plat recorded in Plat Book 95, Page 79, DeKalb County, Georgia Records, which Plat is incorporated by reference herein.

Said property also being known as 7372 Vista Point Trail, Stone Mountain, Georgia 30087 and having a TPID No. 18-027-01-132.

SUPREME COURT OF GEORGIA

Atlanta, July 13, 2007

Case No. S07A0519

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

SOLOMON VEREEN v. DEUTSCHE BANK NATIONAL TRUST COMPANY et al

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT
OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Therese S. Barnes, Clerk